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2
3 IN THE UNITED STATES DISTRICT COURT
4
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA

6 BORTOLO GIOVANNI VIVENZI,
7 Plaintiff,
8
9 v.
10 U.S.A.,
11 Defendant.

E-FILED - 9/30/09

CASE NOS.: C-06-04688-RMW
C-09-00104-RMW
(Criminal No.: CR-85-02160-RMW)

**ORDER DENYING MOTION TO
VACATE, SET ASIDE A CASE AND
MOTION FOR WRIT OF ERROR
CORAM NOBIS**

(Docket Nos.: 1, 1, 823, 824, 826, 827)

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15 Bortolo Giovanni Vivenzi brings what he describes as a Petition for Writ of Error Coram
16 Nobis (action # C-06-04688) and a Motion to Vacate, Set Aside a Case (action # C-09-00104). It
17 appears that C-06-04688 concerns petitioner's federal conviction in action # 85-CR-02160 which
18 involved a conviction for drug trafficking offenses. Petitioner, in essence, believes his plea
19 agreement should have included a request for a judicial recommendation against deportation.

20 Alternatively, he seeks a reduction in his sentence in the hope that would enable him to avoid
21 deportation. His papers do not set forth a basis for granting the relief he requests. Although at the
22 time he was convicted, a judge could recommend against deportation, he sets forth no basis that he
23 could have obtained such a recommendation or that it would have done any good. He also sets forth
24 nothing that shows entitlement to an alternate sentence.

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In his Motion to Vacate, Set Aside Vivenzi references 28 U.S.C. 2255 and refers to being in federal custody. He, however, attaches papers from a state court criminal proceeding. Again, what petitioner appears to seek is an avenue for avoiding deportation. The court finds no basis for relief.

Both the petition and motion are denied. Vivenzi's request for a fee waiver is denied as moot.

DATED: September 30, 2009

Ronald M Whyte

RONALD M. WHYTE
U.S. DISTRICT JUDGE

1 Copy of Order Mailed to:

2 Bortolo Giovanni Vivenzi de la Cruz
3 A# 36216291
4 1705 East Hanna Road
Eloy, AZ 85131
D-214

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